

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:07-cr-183

- vs -

District Judge Walter H. Rice

Magistrate Judge Michael R. Merz

ANTONIO PIERCE,

Defendant.

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**REPORT AND RECOMMENDATIONS**

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This case is before the Court on Joint Motion for Reduction of Sentence on Count 1 to 115 Months Pursuant to the First Step Act (ECF No. 458). All First Step Act motions have been referred to the undersigned for report and recommendations under General Order Day 13-01.

The Joint Motion demonstrates that Antonio Pierce is covered by the First Step Act. When Pierce was sentenced in 2008, the Court calculated his guideline range at 168 to 210 months on Count 1. The impact of the First Step Act is to lower that range to 135 to 168 months. The parties note that the Court sentenced Pierce to 144 months, 15% below the bottom of the advisory guideline range and reason that a proportional reduction below the new bottom would put Pierce's sentence on Count 1 at 115 months. That is the new sentence they recommend.

The Magistrate Judge recommends that the Court grant the Motion and set the case for re-sentencing. At the Court's discretion, the case could be referred to the Probation Office for an

updated Presentence Investigation Report. Alternatively, the Court could in its discretion resentence Pierce to 115 months. The Magistrate Judge believes it is inappropriate for him to recommend which of those alternatives the Court should choose, felony sentencing being a matter uniquely within the Article III authority of District Judges.

May 7, 2019.

s/ *Michael R. Merz*  
United States Magistrate Judge

### NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985). **Because the instant Motion was jointly filed, the parties may wish to expedite the process by filing a joint notice of waiver of the right to object.**